



March 29, 2001

Mr. Craig H. Smith
Deputy General Counsel
Texas Workers' Compensation Commission
4000 South IH-35
Austin, Texas 78704-7491

OR2001-1237

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145438.

The Texas Workers' Compensation Commission (the "commission") received a request for (1) records relating to the posting and selection of candidates for Position 01-125 Hearings/Proceedings, Tyler Field Office Benefit Review Officer II, and (2) all records from the Tyler and Austin office regarding the selection process for this position. You state that the commission has released some responsive information to the requestor. You contend, however, that other responsive information is excepted from required public disclosure pursuant to sections 552.117 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.117 of the Government Code excepts from disclosure the home addresses, telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential in accordance with section 552.024. We have read this exception to include the home email address and home fax number of a governmental employee as well. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the commission must withhold the home address, home telephone number, home fax number, home email address, social security number, and family member information of any applicant currently or formerly employed by the commission, to the extent the applications

contain such information, if that person elected to keep such information confidential under section 552.024 before the request for information was made. Gov't Code § 552.117; *see* Open Records Decision No. 455 at 2 (1987) (section 552.117 does not apply to applicants for governmental employment, but employees hired by the governmental body). However, if an applicant is not employed and was not formerly employed by the commission, section 552.117 does not apply.

You have submitted information showing that certain hired applicants made timely elections under section 552.024. Therefore, the commission must withhold the home address, home telephone number, home fax number, home email address, social security number, and information regarding family members for each applicant that made a timely election to withhold such information under section 552.024 of the Government Code. We agree with most of the markings the commission has made on the submitted documents, but we have made additional markings on information contained in Attachment B.

We note that a social security number is excepted from required public disclosure under section 552.101 of the Government Code in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. See* Open Records Decision No. 622 (1994). It is not apparent to us that the social security numbers contained in the records at issue were obtained or are maintained by the district pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the district to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security numbers at issue were obtained or are maintained pursuant to such a statute and are, therefore, confidential under section 405(c)(2)(C)(vii)(I). We caution the commission, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security numbers of applicants who were not hired by the commission, the commission should ensure that these numbers were not obtained or are maintained by the commission pursuant to any provision of law enacted on or after October 1, 1990.

Section 552.130 provides in relevant part as follows:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Therefore, the commission must withhold the marked information that relates to a driver's license pursuant to section 552.130.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "Karen A. Eckerle".

Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/seg

Ref: ID# 145438

Encl: Marked documents

cc: Ms. Linda LaBeau
1401 Kidd Drive
Tyler, Texas 75703
(w/o enclosures)